IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. Civil Misc. Stay Application No.755 of 2005.

In

S.B. Civil Miscellaneous Appeal No.927 Of 2005.

Jagbir Singh Versus K.H. Singh (Deswar) & Others

Date Of Order ::: 03.11.2006.

Hon'ble Mr. Narendra Kumar Jain J.

Mr. A.K. Bhandari, Senior Counsel assisted by
Mr. Rizwan Ahmed, Counsel for plaintiff-applicant-appellant.
Mr. B. C. Jain, Counsel for defendant-respondents

By the Court :

Heard learned counsel for both the parties.

The matter has come up for orders on the application filed by the respondent No.5 for vacation of ex-parte interim stay order dated 07.04.2005, whereby it was directed that the appellant will not be dispossessed from the property, in dispute, in case he has not been dispossessed so far.

The plaintiff-appellant filed a suit for specific performance in respect of property, in dispute, which was purchased by him vide agreement dated 12.11.1996 and 09.03.2001. The plaintiff-appellant paid an advance of Rs.13 lacs to the defendant-respondent Nos.1 and 2 against total sale amount of Rs.25 lakhs.

Learned counsel for the defendant-respondents submits that the respondent No.1 took loan from the respondent-bank. The decree was passed against him and in execution of the money decree, the property, in dispute belonging to the respondent No.1 has been attached and thereafter, the present suit has been filed. However, the learned counsel for the defendant-respondents does not dispute that the property, in dispute` was not mortgaged with the respondent-bank against the loan amount. The suit of the plaintiff-appellant is still pending in the Lower Court for specific performance, wherein it has been mentioned that out of total amount of Rs.25 lacs, the plaintiff-appellant has already paid Rs.13 lacs and got the possession of the property, in dispute. The matter requires inquiry and during pendency of the suit the

possession of the plaintiff over the property in terms of agreement cannot be allowed to be disturbed.

Consequently, I do not find any merit in the application filed by the respondent No.5 for vacation of ex-parte interim stay order and the same is hereby dismissed.

The interim stay order dated 07.04.2005 is confirmed till the last disposal of this second appeal.

The stay application stands disposed of.

(Narendra Kumar Jain) J.

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